IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

Laxmi Kant Mishra Shashtri

Vs.

Management Committee Geeta Dham Gurukul Shiksha Samiti & Ors.

S.B.CIVIL WRIT PETITION NO.4019/2006

DATE OF ORDER :: April 06, 2007

PRESENT

HON'BLE MR.JUSTICE H.R.PANWAR

Mr.Ashwini Swami, for the petitioner.

Mr.R.S.Saluja, for the respondents.

BY THE COURT:

By the instant writ petition under Article 226 of the Constitution of India, the petitioner has assailed the order Annexure-9 dt. 16.5.2001 terminating his services and the order Annexure-15 dt. 7.1.2006 passed by the Rajasthan Non-Government Educational Institutions Tribunal, Jaipur (for short `the Tribunal' hereinafter) by which the appeal filed by the petitioner was dismissed as barred by period of limitation.

I have heard learned counsel for the parties.

Facts giving rise to the instant writ petition are that after following due process of selection, the petitioner was selected by the selection committee and accordingly he was appointed on the post of Assistant Teacher vide order Annexure-1 dt. 1.7.1997. By order Annexure-9 dt. 16.5.2001, a Management Committee decided to terminate the services of the petitioner on the disciplinary ground. Aggrieved by the order terminating the services vide Annexure-9, the petitioner filed a civil suit before the Civil Judge (Jr.Div.), Osian. During the pendency of the civil suit, the petitioner realized that the order terminating the services is appealable before the Tribunal and, therefore, he withdrew the suit in order to file an appeal. Thereafter, he filed an appeal on 1.4.2002 before the Tribunal being Appeal No.61/2002, which came to be dismissed by the Tribunal vide order Annexure-15 dt. 7.1.2006 only on the ground of period of limitation.

It is contended by the learned counsel for the petitioner that the petitioner was ill-advised initially to move the civil court by way of civil suit, however, when it was realized that the civil suit is not maintainable as an appeal is provided before the Tribunal under section 19 of the Rajasthan Non Government Educational Institutions Act, 1989 (for short `the Act of 1989'

hereinafter), he withdrew the suit and contacted his counsel to prefer an appeal before the Tribunal, however, the counsel failed to file the appeal before the Tribunal and this was the reason of delay in filing the appeal. It is contended by the learned counsel for the petitioner that the petitioner has filed an application under section 5 of the Limitation Act for condonation of delay mentioning therein the sufficient cause by which he was prevented to file the appeal before the Tribunal within the period of limitation. The delay in filing the appeal has occasioned on account of inaction on the part of the counsel engaged by the petitioner. The petitioner seeks condonation of delay.

In Rafiq & Anr. vs. Munshilal & Anr., **AIR 1981 SC 1400,** the Hon'ble Apex Court held as under:

> "The problem that agitate us is whether it is proper that the party should suffer for the inaction, deliberate omission, or misdemeanour of his agent. The answer obviously is in the negative. May be that the learned advocate absented himself deliberately or intentionally. We have no material for ascertaining that aspect of the matter. We say nothing more on that aspect of the matter. However, we cannot be a party to an innocent party suffering injustice merely because his chosen advocate defaulted."

In Special Tehsildar, Land Acquisition, Kerala Vs. K.V.Ayisumma, (1996) 10 SCC 634, the Hon'ble Supreme Court held as under:

> "It is true that Section 5 of the Limitation Act envisages explanation of the delay to the satisfaction of the court and in matters of Limitation Act made no distinction between the State and citizen. Nonetheless adoption of strict standard of proof leads to grave miscarriage of public justice. It would result in public mischief by skilful management of delay in the process of filing the appeal. The approach of the Court should be pragmatic but not pedantic. Under those circumstances, the Subordinate Judge has rightly adopted correct approach and had condoned the delay without insisting upon explaining every day's delay in filing the review application in the light of the law laid down by this Court. The High Court was not right in setting aside the order. Delay was rightly condoned."

In State of Haryana vs. Chandra Mani and Ors. (1996) 3 SCC 132, the Hon'ble Apex Court observed that it is notorious and common knowledge that delay in more than 60 percent of the cases filed in this Court- be it by private party or the State – are barred by limitation and this Court generally adopts liberal approach in condonation of delay finding somewhat sufficient cause to decide the appeal on merits.

In the instant case, the Tribunal failed to examine the

merit of the case and straightway dismissed the appeal only on the ground of limitation. In my view, the delay in filing the appeal before the Tribunal deserves to be condoned and the matter deserves to be remanded to the Tribunal to decide the appeal on merit.

Learned counsel for the respondents submits that the services of the petitioner were terminated on 16.5.2001 and an appeal was preferred before the Tribunal on 1.4.2002 and, therefore, if ultimately the petitioner succeeds in appeal, then the respondents should not be burdened to pay the salary for the inaction and delay caused by the petitioner in preferring the appeal from 16.5.2001 to 31.3.2002.

Having regard to the peculiar facts and circumstances of the case, I consider it just and proper to allow the petition.

In this view of the matter, the writ petition is allowed. Order Annexure-15 dt. 7.1.2006 passed by the Tribunal is set aside. Delay in filing the appeal before the Tribunal is condoned and the matter is remanded to to Tribunal to decide the appeal on merit after affording an opportunity of hearing to both the parties. However, it is made clear that if ultimately the petitioner succeeds in appeal, then the petitioner would not be

entitled for the salary for the period commencing from 16.5.2001 to 31.3.2002.

There shall be no order as to costs.

[H.R.PANWAR],J.

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